

# House Study Bill 72

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY GENERAL BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act specifying a duty of agency applicable to licensed  
2 mortgage brokers and making penalties applicable.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1295DP 83  
5 rn/nh/5

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1 1 Section 1. NEW SECTION. 535B.18 DUTY OF AGENCY.  
1 2 1. A licensee or individual registrant acting in the  
1 3 capacity of a mortgage broker pursuant to section 535B.1,  
1 4 subsection 5, shall be considered to have created an agency  
1 5 relationship with the borrower in all cases and shall perform  
1 6 all of the following duties:  
1 7 a. Act in good faith and with fair dealing toward  
1 8 borrowers and place the borrower's interest ahead of the  
1 9 interest of any other party, including the interest of the  
1 10 licensee or individual registrant.  
1 11 b. Not accept, give, or charge any undisclosed  
1 12 compensation or realize any undisclosed remuneration, either  
1 13 through direct or indirect means, that inures to the benefit  
1 14 of the licensee or individual registrant in connection with  
1 15 the licensee's or individual registrant's relationship with  
1 16 the borrower.  
1 17 c. Carry out all lawful instructions provided or issued by  
1 18 the borrower.  
1 19 d. Affirmatively disclose to a borrower all material facts  
1 20 of which the licensee or individual registrant has knowledge  
1 21 which might reasonably affect the borrower's rights,  
1 22 interests, or ability to receive the borrower's intended  
1 23 benefit from the mortgage loan.  
1 24 e. Use reasonable care in the performance of duties.  
1 25 f. Account to the borrower for all the borrower's money  
1 26 and property received as agent.  
1 27 2. a. This section shall not be construed to prohibit a  
1 28 licensee or individual registrant from contracting for or  
1 29 collecting a fee after services have been rendered which was  
1 30 disclosed and agreed to by the borrower in advance of the  
1 31 provision of such services.  
1 32 b. This section shall not be construed as requiring a  
1 33 licensee or individual registrant to obtain a loan for the  
1 34 borrower containing terms or conditions not available in the  
1 35 usual course of business to the licensee or individual  
2 1 registrant, or to obtain a loan for the borrower from a  
2 2 mortgage lender with whom the licensee or individual  
2 3 registrant does not have a business relationship.  
2 4 3. The duties and standards of care established in this  
2 5 section shall not be waived or modified by contract or  
2 6 otherwise.

### EXPLANATION

2 8 This bill confers upon licensed mortgage brokers and  
2 9 individual registrants a duty of agency.  
2 10 The bill provides that a licensee or individual registrant  
2 11 acting in the capacity of a mortgage broker pursuant to Code  
2 12 section 535B.1, subsection 5, shall be considered to have  
2 13 created an agency relationship with a borrower in all cases.  
2 14 The bill specifies duties a licensee or individual registrant  
2 15 shall perform pursuant to the agency relationship, including  
2 16 acting in a borrower's best interest, in good faith, and with  
2 17 fair dealing, and not accepting, giving, or charging any  
2 18 undisclosed compensation or realizing any undisclosed  
2 19 remuneration that inures to the licensee's or individual  
2 20 registrant's benefit in connection with their relationship

2 21 with the borrower. Additional duties include carrying out all  
2 22 lawful instructions provided or issued by a borrower,  
2 23 affirmatively disclosing all material facts of which the  
2 24 licensee or individual registrant has knowledge which might  
2 25 reasonably affect a borrower's rights, interests, or ability  
2 26 to receive the intended benefit from the mortgage loan, using  
2 27 reasonable care in the performance of duties, and accounting  
2 28 for all the borrower's money and property received as agent.

2 29 The bill states that the duty of agency shall not be  
2 30 construed to prohibit a licensee or individual registrant from  
2 31 contracting for or collecting a fee after services have been  
2 32 rendered which was disclosed and agreed to by the borrower in  
2 33 advance of the provision of the services, and shall also not  
2 34 be construed to require a licensee or individual registrant to  
2 35 obtain a loan for the borrower containing terms or conditions  
3 1 not available to the licensee or individual registrant in the  
3 2 usual course of business, or to obtain a loan for the borrower  
3 3 from a mortgage lender with whom the licensee or individual  
3 4 registrant does not have a business relationship. The bill  
3 5 provides that the duty of agency and standards of care cannot  
3 6 be waived or modified by contract or otherwise.

3 7 A violation of the bill's provisions subjects a licensee to  
3 8 the disciplinary provisions of Code chapter 535B, including  
3 9 license suspension and revocation, and imposition of civil  
3 10 penalties in an amount not to exceed \$5,000 per violation.

3 11 LSB 1295DP 83

3 12 rn/nh/5.1